

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

ESKER MARTIN, III

PLAINTIFF

v.

4:18cv00385-KGB-JJV

VAMESHA ROGERS, Deputy,
Pulaski County Regional Detention Facility; *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Kristine G. Baker. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Esker Martin, III (“Plaintiff”) filed a *pro se* Complaint pursuant to 42 U.S.C. § 1983 without prepayment of the \$400.00¹ filing fee or a complete Application to Proceed Without Prepayment of Fees and Affidavit. (Doc. Nos. 1-2.) On June 8, 2018, I ordered Plaintiff to submit either the statutory filing fee of \$400.00 or a properly completed Application to Proceed Without Prepayment of Fees and Affidavit, with the required calculation sheet and certified copy of his trust fund account statement, within thirty (30) days. (Doc. No. 3.) A blank Application to Proceed Without Prepayment of Fees and Affidavit and a filing fee calculation sheet were mailed to Plaintiff on that same date. The deadline has passed, and Plaintiff has not complied with or otherwise responded to that Order. He was warned that a failure to comply could result in the dismissal of this action without prejudice. (*Id.* at 1-2.)

In addition, on June 15 and 18, 2018, mail sent to Plaintiff from the Court was returned as undeliverable. (Doc. Nos. 4-5.) Therefore, on June 18, 2018, I directed Plaintiff to provide an

¹ Effective May 1, 2013, the cost for filing a new civil case is \$400. The increase is due to a new \$50 administrative fee, which does not apply to persons granted *in forma pauperis* status under 28 U.S.C. § 1915.

updated address and affirm his intent to continue prosecuting this action within thirty (30) days.² (Doc. No. 6.) Additional mail was returned as undeliverable. (Doc. No. 7.) More than thirty days have now passed, and Plaintiff has not complied with or otherwise responded to my Order. He was warned that such failure would result in a recommendation that this action be dismissed without prejudice pursuant to Local Rule 5.5(c)(2). (Doc. No. 6 at 1.)

For these reasons, Plaintiff's Complaint should be dismissed without prejudice. Plaintiff may file either an Application to Proceed Without Prepayment of Fees and Affidavit or the filing fee with his objections to this recommendation.

IT IS, THEREFORE, RECOMMENDED that:

1. Plaintiff's Complaint (Doc. No. 2) be DISMISSED without prejudice.
2. The Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting this recommendation and the accompanying Judgment would not be taken in good faith.

DATED this 23rd day of July, 2018.


 JOE J. VOLPE
 UNITED STATES MAGISTRATE JUDGE

²Local Rule 5.5(c)(2) states:

It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. A party appearing for himself/herself shall sign his/her pleadings and state his/her address, zip code, and telephone number. If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure.

Loc. R. 5.5(c)(2).